

★ DEC 18 2009 ★

BROOKLYN OFFICE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

-against-

KENNETH BOUQUILLON,

Defendant.

08-CR-915

**Statement of Reasons Pursuant to
18 U.S.C. § 3553(c)(2)**

JACK B. WEINSTEIN, Senior United States District Judge:

Under 18 U.S.C. § 3553(c), a sentencing court is required to “state in open court the reasons for its imposition of the particular sentence.” 18 U.S.C. § 3553(c). If, however, the sentence is not of the kind or is outside the range of the sentencing guidelines as referred to in 3553(a)(4), the court is required to state the specific reasons for imposing a sentence different from the guidelines. 18 U.S.C. § 3553(c)(2). These “reasons must also be stated with specificity in the written order of judgment and commitment.” *Id.* Even though the mandatory nature of the guidelines has been excised and they are now “advisory,” see *United States v. Booker*, 543 U.S. 220, 245-46 (2005), the sentencing court must still adhere to the requirements set forth in 18 U.S.C. § 3553(c)(2). *United States v. Jones*, 460 F.3d 191, 197 (2d Cir. 2006).

The sentencing court’s written statement of reasons need only be “a simple, fact-specific statement explaining why the guidelines range did not account for a specific factor or factors under § 3553(a).” *United States v. Rattoballi*, 452 F.3d 127, 138 (2d Cir. 2006). Such a statement should demonstrate that the court “considered the parties’ arguments and that it has a reasoned basis for exercising its own legal decisionmaking authority.” *United States v. Cavera*, 550 F.3d 180, 193 (2d Cir. 2008) (2d Cir. 2008) (quoting *Rita v. United States*, 127 S.Ct. 2456, 2468 (2007)) (internal quotations and alterations omitted).

On July 17, 2009, Bouquillon pled guilty to count four of a four-count indictment. Count four charged that on November 22, 2008, the defendant, together with others, distributed and possessed with intent to distribute marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(vii).

Bouquillon was sentenced on December 2, 2009. The proceeding was videotaped in order to develop an accurate record of the courtroom atmosphere during sentencing and the various in-court factors and considerations that a district court must evaluate in imposing a sentence under 18 U.S.C. § 3553(a). See In re Sentencing, 219 F.R.D. 262, 264-65 (E.D.N.Y. 2004) (utility on appeal).

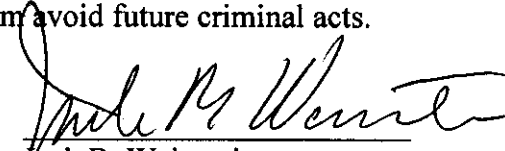
At sentencing, the court found the total offense level to be twenty-seven and defendant's criminal history category to be two, yielding a guidelines range of imprisonment of between seventy-eight to ninety-seven months. The offense charged in count four carried a minimum term of five years' imprisonment and a maximum term of forty years' imprisonment. 21 U.S.C. § 841(b)(1)(B)(vii). The guidelines range of fine was from \$12,500 to \$2,000,000. The underlying charges in the indictment were dismissed upon motion by the government.

Bouquillon was sentenced to sixty-six months in prison, with full credit for time served, and four years' supervised release. A \$100 special assessment was imposed. No fines were imposed because the defendant does not, and likely will not, have assets to pay a fine.

Respectful consideration was given to the sentencing guidelines, the Sentencing Commission's policy statements and all other factors listed under 18 U.S.C. § 3553(a) to ensure that the sentence is "sufficient, but not greater than necessary, to comply with the purposes" of sentencing. 18 U.S.C. § 3553(a). The court imposed a non-guideline sentence under 18 U.S.C. § 3553(a) and Booker.

The court considered the “nature and circumstances of the offense and the history and characteristics of the defendant.” See 18 U.S.C. § 3553(a)(1). The offense is serious in view of the policy of the United States against the possession and distribution marijuana. The defendant is a hard-working dairy farmer. He appears to be goodhearted to his neighbors and others in his community. A sentence of sixty-six months reflects the seriousness of the offense, will promote respect for the law and provide just punishment. See 18 U.S.C. § 3553(a)(2)(A).

Under section 3553(a)(2)(B), there are two major considerations: specific and general deterrence. General deterrence is satisfied with the sentence imposed. The sentence will send a clear message that any involvement with the distribution of marijuana will result in a substantial prison sentence. Specific deterrence is achieved through incapacitation of this defendant. He has considerable family support which will help him avoid future criminal acts.



Jack B. Weinstein
Senior United States District Judge

Dated: December 11, 2009
Brooklyn, New York